IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3728 of 1997

Between:

Smt. V.D.Dhana Lakshmi W/o. Rama Rao,Aged about 43 years, Occupation: Teacher, R/o. WME Church Compound Near Vedraj Theatre, Pathebad, Eluru, West Godavari District.

..... PETITIONER

AND

1. The Commissioner and Director of School Education,

A.P.Hyderabad.

2. The District Educational Officer, West Godavari District, Eluru.

3. The Manager & Correspondent, WME, Upper Primary

School, Eluru,West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or direction more so in the nature of Writ of Mandamus declaring the action of the respondents in issuing the impugned order in Proc. No. 1414/B2-4/96 dt.28/12/96 & Consequential Proceedings of the 2nd Respondent vide No. 148/A3/97 dt. 9/1/97 as highly arbitrary illegal and unconstitutional and consequently direct the respondents herein to absorb the petitioner in the grant in aid post in pursuance of the orders in G.O.M.S.No.411, Education dt.10.11.1994 as per the proposal of the Management vide proceedings No. 2/95 dt,1-1-1995 with effect from 1-4-1994, with all consequential benefits.

Counsel for the Petitioner: MR.RUPENDRA MAHENDRA.

Counsel for the Respondents 1 and 2: GP FOR SCHOOL EDUCATION.

Counsel for the Respondent No.3 : MR.V.JOGAIAH SARMA

The Court made the following :

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ORDER;

This Writ Petition is filed by the petitioner praying for issuance of Mandamus declaring the action of the first respondent in issuing the impugned order in Proceedings No.1414/B2-4/96 dated 28-12-1996, and consequential proceedings of 2nd Respondent in No.148/A3/1997 dated 09-01-1997 as illegal, arbitrary, and unconstitutional, and for a consequential direction to the respondents to absorb the petitioner in the grant in aid post in pursuance of the orders in G.O.Ms.No.411 Education, dated 10-11-1994 as per the proposal of the Management, vide proceedings No.2/95 dated 1-1-1995 with effect from 01-4-1994 with all consequential benefits.

2. According to the petitioner, she obtained B.A. degree from Andhra University and further acquired B.Ed. qualification in the year 1987. Thereafter, the petitioner joined as a teacher in the third respondent institution as Upper Primary School Teacher after having been selected by the duly constituted committee. Since then, i.e., from 13-6-1988. the petitioner has been continuously working as teacher. However, as the petitioner was working in an un-aided post, the third respondent institution has shown as if the petitioner has not worked during the summer vacation. As the petitioner was continuously working in the un-aided post, and when the Government sanctioned two aided posts Vide G.O.Ms.No.411 dated 10-11-1984, the management has forwarded the name of the petitioner along with another against those two posts for approval of the authorities for admission of the petitioner along with another against the aided post. The said recommendations were even forwarded by the District Educational Officer. It appears that the District Educational Officer, who is a competent authority for approval sought for some clarification from the first respondent Commissioner and basing on the clarification dated 28-12-1996 stating that there is no provision for condonation in respect of the persons working in un-aided posts, who were having break in service, the second respondent issued impugned proceedings dated 09-01-1997, directing the third respondent to take necessary action to fill up the posts in which the petitioner was appointed along with the two other posts in accordance with the Rules made in G.O.Ms.No.1 Education, dated 01-01-1994. Aggrieved by the same, the petitioner has come up with the present Writ Petition.

3. According to the petitioner, she possessed all the requisite qualifications and was even

selected by the properly constituted selection committee. But however, as the posts were not admitted to grant in aid, the management has shown breaks in service during the summer vacation. On that ground, the second respondent not only rejected the proposal for approval of appointment of the petitioner but also negatived the claim which was forwarded by the third respondent for admission against the grant in aid post. The learned counsel for the petitioner also contended that though the petitioner has been continuing till date, but, however, the petitioner's case was not considered even subsequently also either for approval of the appointment or for admission against the aided posts.

4 . At the time of hearing, the learned counsel for the petitioner also relied upon the Judgment of the Apex Court in ***Rabinarayan Mohapatra v. State of Orissa.*** wherein the Apex Court had an occasion to consider similar issue and adopted practice of adhocism by giving appointment on 89 days basis with one day break. In that case, the petitioner was appointed as Hindi teacher in the year 1982 and continued for a period of 4 years. He was not paid salary for the period of summer vacation during all those years. When he prayed for approval of appointment, it was rejected. Hence he filed Writ Petition. When the High Court rejected the claim of the petitioner, the Apex Court reversed the Judgment of the Orissa High Court. The Apex Court observed that-

> *"There are neither enough schools nor teachers to teach. Insecurity is writ large on the face of the teaching community because of nebulous and unsatisfactory conditions of service. In order to make the existing educational set-up effective and efficient it is necessary to do away with adhocism in teaching appointments. An appointment on 89 days basis with one day break which deprives a teacher of his salary for the period of summer vacation and other service benefits is wholly arbitrary and suffers from the vice of discrimination. The Validation Act covers the field up to December, 31, 1984. The State of Orissa will do well to consider the cases of all those who have completed one year or more as ad hoc teachers after December, 31,1984 and come out with a scheme or any other appropriate measure to regularise their services."*

Holding so, the Supreme Court allowed the appeal directing the respondents to treat the appellant as regularly appointed Hindi teacher in the School with effect from July, 12, 1982. The appellant shall be entitled to his salary, including the salary for summer vacations and other breaks, which must be taken as non est, from the date of his regular appointment i.e.,

July,12, 1982. The arrears of salary and other emoluments due to the appellant as a result of his regularization were directed to be paid within a period of 3 months.

5. A counter has been filed by the respondents opposing the contentions of the petitioner. In the counter it is stated that as per the Rules in vogue, unless an appointee is in service continuously, he is not entitled for approval of his service and there is no provision in the Act or Rules for condonation of the breaks for approval of the appointments.

6. The learned Counsel for the State also contended that as the appointment of the petitioner was not approved, the petitioner is not entitled to be continued in service but by virtue of interim orders only, the petitioner is continuing. Therefore, the petitioner is not entitled to any relief.

7. From the rival contentions, the issue to be considered is whether the petitioner is entitled to the relief sought for.

8. Admittedly, the petitioner possessed the requisite qualifications of B.A.,B.Ed., It is also the case of the petitioner that she was selected by the regularly constituted Selection Committee and thereafter, she was appointed in the year 1988 and continued till date. Even though initially for certain period, the management has shown breaks during summer vacation, in order to avoid the payment of salary for the summer vacation, but, however, in the year 1994, under G.O.Ms.No.411 dated 10-11-1994, the Government admitted two posts for grant- in- aid as the third respondent institution is partly aided institution. As against those two posts, the management has recommended the name of the petitioner along with another, both for approval of appointment as well as for admission against the grant in aid posts with effect from 01-04-1994. The second respondent, who is the competent authority, sought for certain clarifications from the first respondent Commissioner. Basing on the clarification, the second respondent rejected the claim of the petitioner and directed the management to take further action for filling up of the vacancies as if the vacancies are unfilled. Aggrieved by the same, the present Writ petition has been filed.

9. At the time of hearing, the learned counsel also placed a judgment of this Court in case of ***K.C.High School, Guntur v. Govt. of A.P., Edn.,Department, Hyderabad,*** wherein the Division Bench of this Court had an occasion to consider a batch of cases where certain teaching and non-teaching staff were appointed without following the procedure

contemplated under the existing Rules. The Division Bench directed the Government to constitute a committee of officials to make necessary enquiry with reference to the irregular appointments made contrary to the Rules made in G.O.Ms.No.524, Edn. Dated 20-12-1988 and directed that if the teachers fulfill the prescribed qualifications, they shall be extended the benefits of grant in aid for the posts held by them with effect from 01-4-1997. Therefore, it was contended by the learned counsel that the petitioner who possessed the requisite qualifications and who was selected by properly constituted Committee, cannot be said to have been irregularly appointed or such appointment cannot be held as an non est. In fact, in the counter, it was not disputed that the petitioner's appointment was in pursuance of the selection made by the properly constituted Selection Committee. The only ground on which the petitioner's claim, as forwarded by the third respondent management was rejected is that there was a break in service, and therefore, it is treated as if the petitioner was not at all properly selected or appointed. The said view taken by the official respondents is clearly illegal and without jurisdiction. The third respondent management has shown the break in service during the summer vacation, for which the petitioner cannot be held responsible. By virtue of the said action of the third respondent, the petitioner was not only denied the salary for the summer vacation period, but also denied the legitimate benefit to which she is entitled. Similar practice has been deprecated by the Supreme Court in the Judgment referred to earlier. Further, as the petitioner has been continuously working as a teacher till now, who is not even paid regular scale of pay, she is entitled to be considered for admission against the aided vacancy.

10. Under the above circumstances, the respondents are directed to treat the petitioner as regularly appointed against the regular vacancy, which was not even disputed as is evident from the proceedings dated 09-01-1997. Consequently, the petitioner is also entitled for admission to the grant. The respondents are directed to admit the petitioner against the grant-in-aid post with effect from the date from which grant in aid was sanctioned to the third respondent institution under G.O.M s.No.411 dated 10-11-1994. As a result of admission of the petitioner against grant in aid post, if arrears are payable, the respondents are directed to realise the same within a period of three months from the date of receipt of the copy of this order.

11. The writ petition is accordingly allowed. No costs.

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(S.ANANDA REDDY,J)

Dated 09-09-2004.

Dvs

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta,the Chief Justice on this Thursday the ninth day of September, Two thousand and four.

To

1. The Commissioner and Director of School Education, A.P.Hyderabad.
2. The District Educational Officer, West Godavari District, Eluru.
3. The Manager & Correspondent, WME, Upper Primary

School, Eluru,West Godavari District.

4. Two C.Cs. to the Government Pleader for the School Education, High

Court Buildings, Hyderabad.

5. Two CDs.

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